

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 IN RE WESTERN STATES WHOLESALE)
4 NATURAL GAS ANTITRUST)
5 LITIGATION)

MDL Docket No. 1566

Base Case No. 2:03-cv-01431-RCJ-PAL

6 THIS DOCUMENT RELATES TO:

7 *Arandell Corp., et al. v. Xcel Energy, Inc., et*)
8 *al.*)

Case No. 2:07-cv-01019-RCJ-PAL

9 *NewPage Wisconsin System Inc. v. CMS*)
10 *Energy Resource Management Co., et al.*)
11)
12)
13)

Case No. 2:09-cv-00915-RCJ-PAL

14 **ORDER PRELIMINARILY CERTIFYING SETTLEMENT CLASSES, APPROVING**
15 **CLASS SETTLEMENT, APPROVING CLASS NOTICE AND SETTING DATE FOR**
16 **FAIRNESS HEARING**

17 The motion of the Plaintiffs in the above-captioned actions (the “Actions”) for separation of
18 claims and for preliminary approval of the terms and conditions (the “Settlements”) in the following
19 Settlement Agreements (collectively, the “Agreements”) has come before this Court:

- 20 (i) the Settlement Agreement dated February 1, 2019 entered into between Plaintiffs and
21 El Paso Corporation (n/k/a El Paso LLC) and El Paso Merchant Energy, L.P. (n/k/a
22 El Paso Marketing Company, L.L.C.) (collectively “El Paso Defendants”); and
23 (ii) the Settlement Agreement dated February 1, 2019 entered into between Plaintiffs and
24 CenterPoint Energy Services, Inc., (“CenterPoint Defendant”);

25 The El Paso Defendants, and CenterPoint Defendant are hereinafter referred to collectively
26 as the “Settling Defendants.” Plaintiffs and the Settling Defendants are hereinafter referred to
27 collectively as the “Parties.”
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1 The Court, after carefully considering the motion and all papers filed and proceedings held
2 herein, including the Agreements and proposed Notice Plan, for good cause HEREBY FINDS AND
3 ORDERS THE FOLLOWING:

4 1. The Parties include plaintiffs Arandell Corporation, Merrick's Inc., Sargento Foods
5 Inc., Ladish Co. Inc. (n/k/a ATI Ladish LLC), Carthage College, Briggs & Stratton Corporation, and
6 NewPage Wisconsin System Inc. (n/k/a Verso Minnesota Wisconsin LLC) (collectively hereinafter,
7 "Plaintiffs"), both individually and on behalf of proposed settlement classes of industrial and
8 commercial purchasers of natural gas for their own use or consumption in the State of Wisconsin, as
9 more particularly defined in Paragraph 4 of this Order, and other affiliated Releasors defined in the
10 Agreements, along with the Settling Defendants and other affiliated Releasees as defined in the
11 Agreements.

12 2. This Court entered a Suggestion of Remand on January 14, 2019 (ECF No. 3105).
13 However, as the Court finds that it will promote the convenience of the parties and the just and
14 efficient conduct of the Actions, the claims in the Actions against El Paso, CenterPoint, and Reliant
15 (Reliant Energy, Inc. (n/k/a GenOn Energy, Inc.), and Reliant Energy Services, Inc. (n/k/a RRI
16 Energy Services, LLC)), are separated from the claims against the remaining defendants. With
17 respect to El Paso and CenterPoint, this Court finds that it will avoid delay and facilitate prompt
18 distribution of the settlement funds to class members if this Court (which has overseen multiple class
19 settlements in this MDL) retains jurisdiction over the claims against these settling defendants.
20 Further, because the CenterPoint settlement is linked to a separate settlement involving the bankrupt
21 entity Reliant and eventual dismissal of the claims against Reliant in the Actions, this Court finds
22 that it will avoid delay and facilitate the completion of the CenterPoint settlement and distribution of
23 the CenterPoint settlement funds to class members if this Court retains jurisdiction over the claims in
24 the Actions against Reliant as well. Thus, this Court requests that the Judicial Panel on Multidistrict
25 Litigation ("JPML") allow this Court to retain jurisdiction over the claims in this Action against El
26 Paso, CenterPoint and Reliant. This Court amends its Order of January 14, and suggests remand of
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1 the claims against the remaining defendants other than El Paso, CenterPoint and Reliant. The
2 Plaintiffs may file this Order with the JPML.

3 3. The Agreements are incorporated by reference in this Order. All terms which are
4 defined in the Agreements and used but not otherwise defined herein shall have the meanings
5 ascribed to them in the Agreements.

6 4. For purposes of determining whether the Agreements should be preliminarily
7 approved, the Court conditionally certifies, for purposes of settlement only, pursuant to Rules 23(a)
8 and (b)(3) of the Federal Rules of Civil Procedure 23(b)(3), the Class defined as follows:

9 All industrial and commercial purchasers of natural gas for their own use
10 or consumption during the Relevant Time Period, and which gas was used
11 or consumed by them in Wisconsin. Excluded from the Class are (a)
12 entities that purchased natural gas for resale (to the extent of such
13 purchase for resale); (b) entities that purchased natural gas for generation
14 of electricity for the purpose of sale (to the extent of such purchase for
15 generation); (c) entities that purchased natural gas from entities that sold
16 natural gas at rates approved by the Wisconsin Public Service Commission
17 (to the extent of such purchases at such approved rates); (d) defendants
18 and their predecessors, affiliates and subsidiaries; and (e) the federal
19 government and its agencies.

20 5. "Class Period" means, with respect to each of the Midwest Classes, the
21 period from January 1, 2000, through October 31, 2002.

22 6. The Court preliminarily finds that the Settlements set forth in the Agreements: (i)
23 resulted from extensive, good-faith, arms-length negotiations between the Parties, conducted after
24 Class Counsel as defined herein had conducted adequate investigation and discovery; and (ii) are
25 sufficiently fair, reasonable and adequate to the Wisconsin Class to warrant providing notice in
26 accordance with the Notice Plan described in the Motion for Preliminary Approval and thereafter
27 conducting the final Fairness Hearing as described in Paragraph 11, below.

28 7. The Actions are, for settlement purposes only, certified as class actions against the
Settling Defendants pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure for the
Wisconsin Class and with respect to the Class Period. Certification for settlement purposes is
appropriate because:

- 1 a. The Court preliminarily finds that the requirements of Rules 23(a) and (b)(3) of the
2 Federal Rules of Civil Procedure are met in that:
- 3 (i) The Wisconsin Class is so numerous that joinder of all members is
4 impracticable;
- 5 (ii) The Plaintiffs' claims against the Settling Defendants and the defenses thereto
6 present questions of law or fact common to the Wisconsin Class that
7 predominate over questions affecting individual members of the Wisconsin
8 Class;
- 9 (iii) The claims against the Settling Defendants brought by the Plaintiffs in the
10 Actions, as industrial and commercial purchasers of natural gas for their own
11 use and consumption during the Class Period, are typical of the claims of, or
12 defenses to the claims of, members of the Wisconsin Class against the Settling
13 Defendants;
- 14 (iv) Plaintiffs and Class Counsel for the Wisconsin Class have fairly, adequately
15 and vigorously represented the interests of the Wisconsin Class as respects
16 claims against the Settling Defendants;
- 17 (v) Certifying the Wisconsin Class for purposes of settlement is superior to others
18 method for the fair and efficient adjudication of the controversy in the Actions
19 as against the Settling Defendants; and
- 20 (vi) Manageability for trial purposes is not an issue and need not be considered in
21 determining whether to certify the Midwest Classes herein for purposes of
22 settlement. *See Amchem v. Windsor*, 512 U.S. 591, 619 (1997).

23 8. Pursuant to Fed. R. Civ. P. 23(g), for settlement purposes, Kohner, Mann & Kailas,
24 S.C., and Polsinelli PC are preliminarily appointed as co-counsel for the Wisconsin Class. Arandell
25 Corporation, Merrick's Inc., Sargento Foods Inc., Ladish Co. Inc. (n/k/a ATI Ladish LLC), Carthage
26 College, Briggs & Stratton Corporation, and NewPage Wisconsin System Inc. (n/k/a Verso
27 Minnesota Wisconsin LLC). are preliminarily appointed as representatives for the Wisconsin Class.
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1 9. AB Data, Ltd. is preliminarily appointed as Settlement Administrator.

2 10. The Court has reviewed the proposed Long and Short Form Class Notice(s) submitted
3 as Exhibits 4 and 5 to the Motion for Preliminary Approval and preliminarily approves such notices
4 as to form and content. Class Counsel and/or the Settlement Administrator shall cause Class Notice
5 to be disseminated in the manner provided in the Notice Plan described in the Motion for
6 Preliminary Approval (the “Notice Plan”) within 28 days after the entry of this Order. The costs
7 associated with providing class notice shall be borne as set forth in the Agreements, including the
8 provisions thereof addressing the allocation of such costs in the event that the Settlements do not
9 become final. The Court preliminarily finds that the form(s) and method(s) of giving notice of the
10 Settlements are reasonably certain to inform the absent members of the Wisconsin Class, are the best
11 notice that is practicable under the circumstances, and constitute valid, due and sufficient notice to
12 all members of the Wisconsin Class in compliance with the requirements of the Federal Rules of
13 Civil Procedure and of due process under the United States Constitution, and the requirements of any
14 other applicable rules or laws.

15 11. A final Fairness Hearing is scheduled for **9:00AM, April 17, 2019**
16 a.m. in Courtroom **4B** of this Court, located at 333 S. Las Vegas Blvd., Las Vegas, NV 89101. At
17 the Fairness Hearing, the Court will consider and/or determine, among other things: (i) whether to
18 finally certify for settlement purposes the Wisconsin Class as against the Settling Defendants; (ii)
19 whether to finally approve the Settlements as fair, reasonable and adequate; (iii) whether the Notice
20 Plan and Class Notice(s) provided complied with the Federal Rules of Civil Procedure and due
21 process; (iv) whether to enter the Final Order and Judgment approving the applicable Settlement in
22 the form(s) attached to the respective Agreements as Exhibit 1 thereto; and/or (v) whether to grant
23 the Fee and Expense Application(s) submitted by Class Counsel and/or the applications for incentive
24 award(s) to Plaintiffs and, if so, the amounts thereof to be awarded out of the Settlement Fund(s).
25 The Court reserves the right to approve the Settlements at or after the Fairness Hearing and to do so
26 with such modifications as may be consented to by the applicable Parties and without further notice
27 to the members of the Wisconsin Class.

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1 12. All papers supporting final approval of the Settlements (other than papers that may be
2 filed by one of the Parties in response to requests for exclusion or objections as described in
3 Paragraphs 14-15 below), shall be filed no later than twenty-one (21) days before the Fairness
4 Hearing. The Fairness Hearing may be postponed, adjourned or rescheduled by order of the Court
5 without further notice to the members of the Wisconsin Class, other than that which may be posted
6 on the Court's website.

7 13. The Court further approves the procedures for prospective members of the Wisconsin
8 Class to exclude themselves from (*i.e.*, opt out of) or object to, the Settlements, as set forth in
9 Agreements and in the Class Notice(s).

10 14. In particular, any person or entity who seeks to opt out of the Wisconsin Class must
11 submit a timely and valid written request for exclusion in accordance with the Agreements. As a
12 result of the release and as provided in the Agreements, a prospective Class Member seeking to opt
13 out must request exclusion from all of the Settlements that are the subject of the Class Notice (for
14 example, it is not permitted to exclude oneself from the settlement with one of the Settling
15 Defendants, but remain a class member for purposes of the settlement with any other of the Settling
16 Defendants).

17 15. To be "timely," a request for exclusion must be mailed to Class Counsel or to the
18 Settlement Administrator at the address(es) provided in the Class Notice and postmarked (or mailed
19 by overnight delivery) no later than twenty-one (21) days prior to the date of the Fairness Hearing.
20 To be "valid," a request for exclusion must also: (i) state the name, address, and phone number of
21 the person or entity seeking exclusion; (ii) state all trade names or business names and addresses that
22 the person or entity (and any of his, her or its parents, subsidiaries, affiliates, predecessors or
23 assignors who purchased, used or consumed natural gas during the class period) has used during or
24 since the class period; (iii) state, with respect to natural gas purchased, used or consumed within
25 Wisconsin during the Class Period by any of the persons and entities described in sub-parts (i) or (ii)
26 above, an estimate of the total dollar amount paid for such natural gas or an estimate of the total
27 volume of such natural gas, and identify all entities from or through whom such natural gas was
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1 purchased; (iv) include the case name of the actions (*In Re Western States Wholesale Natural Gas*
2 *Antitrust Litigation*, MDL No. 1566 (D. Nev.)); (v) include the statement that “[name of person or
3 entity] and all of its parents, subsidiaries and affiliates hereby request to be excluded from the
4 proposed class settlements described in the notice of settlements pertaining to the actions;” and (vi)
5 in the case of an entity, identify the title or position of the person signing on behalf of such entity,
6 state that such person is duly authorized to sign on behalf of such entity, and be signed by such
7 person. A request for exclusion that does not strictly comply with all of the requirements set forth in
8 this paragraph shall be invalid, and every person or entity submitting such an invalid request shall be
9 a Class Member, and shall be bound by the Agreements if they are approved by the Court. Class
10 Counsel shall immediately forward complete copies of all requests for exclusion, as they are
11 received, to counsel for the Settling Defendants (and the Settlement Administrator shall promptly
12 forward to Class Counsel copies of all requests for exclusion, as they are received).

13 16. Within five (5) days after the Court-ordered deadline for timely requests for exclusion
14 from the Wisconsin Class, counsel for the Parties shall meet and confer and establish complete lists
15 of: (i) all timely and valid requests for exclusion received as of that date; (ii) all requests for
16 exclusion received that the Parties agree are either not timely or otherwise not valid; and (iii) all
17 requests for exclusion received as to which there is any dispute requiring Court resolution at the
18 Fairness Hearing as to whether such request for exclusion was both timely and otherwise valid.
19 Either of the parties may file papers addressing the issues set forth in this paragraph no later than
20 seven (7) days before the Fairness Hearing.

21 17. Any person or entity that submits a timely and valid request for exclusion shall be
22 excluded from the Wisconsin Class, shall have no rights with respect to these Settlements (including
23 no right to share in any recovery obtained pursuant to the Actions) and shall not be permitted to
24 intervene as a party plaintiff in the Actions (but without affecting those persons or entities’ ability to
25 exercise their rights under Fed. R. Civ. P. 23 or the Class Notice(s)). Any prospective member of
26 the Wisconsin Class who does not timely and validly request to be excluded in the manner set forth
27 above and in the Class Notice and the Agreements will be deemed to have waived all rights to opt
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1 out of, and will be deemed a member of, the Wisconsin Class for all purposes under the Agreements
2 (including the releases of claims thereunder) and will be bound by all proceedings, orders and
3 judgments in the Actions, including the terms of the Settlements, if approved.

4 18. Prospective members of the Wisconsin Class who have not timely and validly
5 requested exclusion and who want to object to the Settlements must do so in accordance with the
6 procedures set forth in the Agreements and in the Class Notice(s). Specifically, any such person or
7 entity must, no later than thirty (30) days before the Fairness Hearing, both file with the Court and
8 mail to Class Counsel or the Settlement Administrator, and also mail to counsel for the Settling
9 Defendants, a written objection that includes: (i) a notice of intention to appear; (ii) proof of
10 membership in the Wisconsin Class; and (iii) the specific grounds for the objection and any reasons
11 why such party desires to appear and be heard, as well as all documents or writings that such party
12 desires the Court to consider. To address the possibility that objectors may fail to mail objections to
13 both sides, the Parties shall exchange, by email within five (5) days after close of the period for
14 filing objections, pdf copies of all objections received.

15 19. Objections to the Settlements shall be heard, and any papers or briefs submitted in
16 support of said objections shall be considered by the Court (unless the Court in its discretion shall
17 otherwise direct), only if they comply with the objection procedures set forth herein. Counsel for the
18 Parties may file and serve written response(s) to any objection no later than 5 days before the
19 Fairness Hearing. Any Wisconsin Class member who does not object in the manner prescribed
20 herein and in accordance with the applicable provisions of the Agreements and Class Notice(s) will
21 be deemed to have waived any objections and will be barred from making any such objections in the
22 Actions or in any other action or proceedings related thereto, including in an appeal or collateral
23 attack.

24 20. Any entity which has timely and properly excluded itself from the Wisconsin Class
25 shall be permitted to apply to the Court for good cause shown to re-enter the Wisconsin Class prior
26 to final approval of the settlement classes. If the Court approves such application, the applying
27 entity will retain the same rights and obligations under the Agreement as the Class Members.

1 21. Pursuant to the stipulation of the Parties, they, and their respective counsel, shall not
2 encourage or solicit, or substantively assist in any way whatsoever, any person or entity to request
3 exclusion from the Wisconsin Class.

4 22. Pursuant to the Agreements, each of the Settling Defendants shall deliver into the
5 Escrow Account the initial installment of its payment towards the Settlement Fund within fourteen
6 (14) days of the entry of this Order. Up to a maximum of \$50,000 from each of the Settling
7 Defendants' payments towards the Settlement Fund may be utilized toward the costs of Class Notice
8 and/or of administration of the Settlement Fund (subject to further allocation as provided in the
9 Agreements).

10 23. If final approval of the Settlements is not obtained, or if the Settlements do not
11 become Final as provided in the Agreements, or if the Agreements are otherwise terminated or
12 rescinded pursuant to their terms for any reason (including pursuant to the applicable
13 Supplemental Agreement(s)), then: (i) the claims against El Paso and CenterPoint shall be rejoined
14 with the remaining claims in the Action, whether in this jurisdiction or in the Western District of
15 Wisconsin, if remand of the remaining claims has already occurred, (ii) any preliminary or final
16 certification of the Wisconsin Class shall be automatically vacated, *nunc pro tunc*; (iii) all other
17 provisions set forth in paragraph 37 of the El Paso Agreement and paragraph 36 of the CenterPoint
18 Agreement shall apply; (iv) any and all amounts paid by Settling Defendants into the Settlement
19 Fund and/or deposited in the Escrow Account (including interest earned thereon) shall be returned to
20 Settling Defendants within thirty (30) calendar days, less only disbursements made in accordance
21 with paragraphs 37 of the El Paso Agreement and paragraph 36 of the CenterPoint Agreement; and
22 (iv) Settling Defendants shall have no further payment obligations pursuant to the Agreements.

23 24. Neither the Agreements nor this Order shall be deemed or construed to be an
24 admission by the Settling Defendants of: (i) any violation of any statute or law or of any liability or
25 wrongdoing whatsoever by the Settling Defendants; or (ii) the propriety of certification of a
26 litigation class in the Actions.

25. To facilitate administration of the Settlements pending final approval, the Court hereby stays all proceedings in the Actions in this Court as between the Wisconsin Classes and the Settling Defendants until further order of the Court, except such proceedings as may be necessary either to implement the Settlements or to comply with or effectuate the terms of the Agreements or Fed. R. Civ. P. 23. The Court further enjoins, prior to entry of a final order after the Fairness Hearing, all Wisconsin Class members from filing any claims, suits or proceedings asserting Released Claims against any of the Settling Defendants unless and until such Wisconsin Class members have filed valid requests for exclusion in accordance with Paragraphs 14-15 hereof.

26. For purposes of the CenterPoint settlement, this Court's Order is an indicative order under Federal Rule of Civil Procedure 62.1(3). If the Court of Appeals remands the Wisconsin claims against CenterPoint, then this Court intends to enter the relief indicated in this Order with respect to the CenterPoint settlement, automatically and without requirement of entry of any further order, *nunc pro tunc* the date of this Order.

27. If any deadline in this Order falls on a non-business day, then the deadline is extended until the next business day.

IT IS SO ORDERED.

Dated: — April 5, 2019

Hon. Robert C. Jones
United States District Judge

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: WESTERN STATES WHOLESALE
NATURAL GAS ANTITRUST LITIGATION**

MDL No. 1566

(SEE ATTACHED SCHEDULE)

ORDER VACATING, IN PART, CONDITIONAL REMAND ORDER

In accordance with orders entered by the District of Nevada transferee court on February 19, 2019, the Panel's Conditional Remand Order filed February 11, 2019 (ECF No. 273), is VACATED, in part, as follows:

With respect to Heartland Regional Medical Center, et al. v. Oneok, Inc. et al., C.A. No. 2:07-00987 (W.D. Missouri C.A. No. 5:07-06048), and Learjet, Inc., et al. v. Oneok, Inc., et al, C.A. No. 2:06-00233 (D. Kansas C.A. No. 2:05-02513), the Conditional Remand Order is VACATED in its entirety.

With respect to Arandell Corp. et al v. Xcel Energy Inc. et al., C.A. No. 2:07-01019 (W.D. Wisconsin C.A. No. 3:07-00076) and NewPage Wisconsin System, Inc., et al. v. CMS Energy Resource Management Company, et al., C.A. No. 2:09-00915 (W.D. Wisconsin C.A. No. 3:09-00240), the Conditional Remand Order is VACATED as to the claims by plaintiffs in those actions against (1) El Paso Corporation (n/k/a El Paso LLC), and El Paso Merchant Energy, L.P. (n/k/a El Paso Marketing Company, L.L.C.); (2) CenterPoint Energy Services, Inc.; and (3) Reliant Energy, Inc. (n/k/a GenOn Energy, Inc.), and Reliant Energy Services, Inc. (n/k/a RRI Energy Services, LLC).

FOR THE PANEL:


Jeffrey N. Lüthi
Clerk of the Panel

**IN RE: WESTERN STATES WHOLESALE
NATURAL GAS ANTITRUST LITIGATION**

MDL No. 1566

SCHEDULE FOR CRO

TRANSFeree			TRANSFEROR			CASE CAPTION
<u>DIST</u>	<u>DIV.</u>	<u>C.A.NO.</u>	<u>DIST</u>	<u>DIV.</u>	<u>C.A.NO.</u>	
NV	2	06-01351	CO	1	06-01110	Breckenridge Brewery of Colorado, LLC et al v. Oneok Inc. et al (MDL 1566)
NV	2	05-01331	KS	2	05-02389	Reorganized FLI, Inc. v. Williams Companies, Inc., et al MDL 1566
NV	2	06-00233	KS	2	05-02513	Learjet, Inc. v. Oneok, Inc. - MDL 1566
NV	2	07-00987	MOW	5	07-06048	Heartland Regional Medical Center et al v. Oneok, Inc. et al - MDL 1566
NV	2	06-00267	OKN	4	05-00435	Sinclair Oil Corporation v. e prime Inc. et al - MDL 1566
NV	2	07-01019	WIW	3	07-00076	Arandell Corp. et al v. Xcel Energy Inc. et al - MDL 1566
NV	2	09-00915	WIW	3	09-00240	NewPage Wisconsin System Inc. v. CMS Energy Resource Management Company et al
NV	2	06-00282	WY	1	05-00254	Sinclair Oil Corporation v. Oneok Energy Services Co. MDL 1566